

REMARKS

Summary of Office Action

Claims 1-16 are pending in the above-identified patent application.

Claims 1-5 and 11-16 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lesh et al. U.S. Patent 6,152,144 ("Lesh").

Claims 1, 5, 8-14, and 16 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, and 5-9 of U.S. Patent 6,652,556.

Claims 6 and 7 are objected to a being dependent upon a rejected base claim, but would be allowable if rewritten in suitable independent form.

Summary of Applicants' Reply

Applicants note with appreciation the indication of allowable subject matter in claims 6 and 7. Applicants expressly reserve the right to rewrite claims 6 and 7 in independent form should the base claim ultimately not be allowed.

Applicants' Reply To The Double Patenting Rejections

The Examiner has rejected claims 1, 5, 8-14, and 16 under the doctrine of obviousness-type double patenting as

being unpatentable over claims 1, 2, and 5-9 of U.S. Patent 6,652,556.

In response, applicants file herewith a Terminal Disclaimer under 37 C.F.R. §§1.321(b,c), disclaiming the portion of the term of any patent to be granted on this application which would extend beyond the expiration of U.S. Patent 6,652,556.

A check in the amount of \$55.00, in payment of the fee set forth in 37 C.F.R. §1.20(d) (small entity), is enclosed herewith.

Accordingly, applicants respectfully submit that these rejections should be withdrawn.

Applicants' Reply to the  
35 U.S.C. §102(b) Rejection

The Examiner has rejected claims 1-5 and 11-16 under 35 U.S.C. § 102(e) as being anticipated by Lesh. This rejection is respectfully traversed.

Applicants' invention, as defined by independent claim 1, is directed toward an apparatus for attachment over the ostium of a left atrial appendage in a patient. A membrane, having an outer periphery with a dimension larger than a corresponding dimension of an ostium, is configured to extend over the ostium. Securement means secure the outer

periphery of the membrane in direct engagement with the atrial wall surrounding the ostium.

Lesh refers to a device and method for occluding the left atrial appendage by placing a plug (e.g., figures 15-19) or plug-like devices (e.g., figures 1-3 and 6-7) within the arterial appendage (e.g., figures 4, 5, 12, 15-19, and column 2, lines 57-61).

The Examiner contends the Lesh shows all of the features of applicants' independent claim 1. Applicants' respectfully disagree with the Examiner's contention.

Lesh does not disclose or suggest a membrane having an outer periphery with a dimension larger than a corresponding dimension of the ostium, as required by applicants' independent claim 1. Instead, Lesh refers to positioning an occluding member "within the body or passageway" (Lesh, column 2, lines 59-60).

Lesh also does not disclose or suggest a securement means to secure the outer periphery of the membrane in direct engagement with the atrial wall surrounding the ostium, as required by applicants' independent claim 1. Instead, Lesh's devices have anchors or retainers that engage the insides of the appendage to create a seal between the device and the

inside of the body cavity (Id., lines 11, 14-17, 25-26, and 6-64).

Further, applicants presented similar arguments in the parent application, now granted as U.S. Patent 6,652,555. In response to these arguments, the Examiner allowed the claims stating that "[a]pplicant's arguments regarding the placement of the Lesh membrane within the ostium rather than outside of it are persuasive."

Thus, Lesh does not disclose all of the features of applicants' independent claim 1. Therefore, the rejection of independent claim 1 and corresponding dependent claims 2-5 and 11-16 should be withdrawn.

Conclusion

For the reasons set forth above, claims 1-16 are allowable. This application is therefore in condition for allowance. Prompt allowance of this application is respectfully requested.

Respectfully submitted,

  
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